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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/645,949	08/25/2000	Donald R. Humlicek	0-275	4067

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EXAMINER

TRAN, DENISE

ART UNIT	PAPER NUMBER
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2186

DATE MAILED: 05/19/2004

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Please find below and/or attached an Office communication concerning this application or proceeding.

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Office Action Summary

Application No.

09/645,949

Applicant(s)

HUMLICEK, DONALD R.

Examiner

Denise Tran

Art Unit

2186

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 11 March 2004.
2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-23 is/are pending in the application.
4a) Of the above claim(s) _____ is/are withdrawn from consideration.
5) ☐ Claim(s) _____ is/are allowed.
6) ☒ Claim(s) 1-20 is/are rejected.
7) ☒ Claim(s) 21-23 is/are objected to.
8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
10) ☒ The drawing(s) filed on 8/25/00 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____.
4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____.
5) ☐ Notice of Informal Patent Application (PTO-152)
6) ☐ Other: _____.

DETAILED ACTION

1. The applicant's amendment filed 3/11/04 has been considered. Claims 1-20 and newly added claims 21-23 are presented for examination.
2. Claims 15-20 and 22-23 are objected because the word "commend" claim 22, line 4 is misspelled and should be --command--; and claim 15, line 3, "said circuit" should be --a circuit--.
3. Claims 21 and 23 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.
4. Claim 22 is allowable over the prior art of record.
5. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

6. Claims 1-20 are rejected under 35 U.S.C. 102(e) as being anticipated by DeKoning et al., 6,467,023, hereinafter DeKoning.

The applied reference has a common assignee with the instant application. Based upon the earlier effective U.S. filing date of the reference, it constitutes prior art under 35 U.S.C. 102(e). This rejection under 35 U.S.C. 102(e) might be overcome either by a showing under 37 CFR 1.132 that any invention disclosed but not claimed in the reference was derived from the inventor of this application and is thus not the invention "by another," or by an appropriate showing under 37 CFR 1.131.

As per claims 1 and 14, DeKoning teaches the use of providing sequential initialization of redundancy data in a volume comprising the steps of:

Defining a boundary (e.g. abstract);
Determining a location of the data with respect to the boundary (e.g. abstract);
and
Initializing a redundancy location of the volume as data and a redundancy of the data is written to the volume (e.g. abstract).

As per claim 2, DeKoning teaches the use of writing the data to a first portion of the volume and writing a redundancy of the data to a second portion of the volume (e.g. col. 3, lines 50-65).

As per claim 3, DeKoning teaches the use of the first portion comprises a primary data portion and the second portion comprises a redundancy data portion (e.g. abstract and col. 3, lines 50-65).

As per claim 4, DeKoning teaches the use of if the location is before the boundary, writing the data (e.g. col. 3, lines 50-65).

As per claim 5, DeKoning teaches the use of if after the boundary, enforcing a sequential write or not enforcing a sequential write (e.g. col. 3, lines 50-65 and col. 8, line 64 to col. 9, line 17).

As per claims 6 and 16, DeKoning teaches the use if the location is at the boundary, moving the boundary and initializing the redundant location or a next redundant location (e.g. col. 3, line 50 to col. 4, line 16).

As per claim 7, DeKoning teaches the use of the boundary comprises an initialization boundary (e.g. col. 3, line 50 to col. 4, line 16).

As per claim 8, DeKoning teaches the use of configured to sequentially write redundant data to a redundancy portion of the volume (e.g. col. 3, lines 50-65 and col. 8, line 64 to col. 9, line 17).

As per claim 9, DeKoning teaches the use of indicating an end of a primary data portion (e.g. col. 3, line 50 to col. 4, line 16).

As per claim 10, DeKoning teaches the use of in response to a predetermined attribute (e.g. abstract).

As per claim 11, DeKoning teaches the use of predetermined attribute is user defined (e.g. col. 6, lines 35-45).

As per claims 12 and 13, DeKoning shows the controller software medium and computer readable medium to perform the steps of claim 1 (e.g. abstract).

As per claim 15, DeKoning teaches the use of a volume configured to provide initialization of redundancy data, wherein the circuit is configured to sequentially initialize a redundant location of the volume to store redundant data up to a boundary of the volume wherein the initialization is performed as the redundant data is written to the volume (e.g. abstract, figure 1, element 102 and col. 8, line 64 to col. 9, line 17).

As per claim 17, DeKoning teaches the use of the volume is controlled by a host device (e.g. figure 1, element 130).

As per claim 18, DeKoning teaches the use of the apparatus further comprises a drive controller (e.g. figure 1, element 102).

As per claim 19, DeKoning teaches the use of the apparatus is configured to control one or more drives (e.g. figure 1, elements 102 and 108).

As per claim 20, DeKoning teaches the use of the apparatus is configured to control one or more volumes of the one of more drives (e.g. abstract and figure 1, elements 102 and 108).

7. Applicants remarks, filed 3/11/04, have been considered but are not persuasive.

8. In the remarks, Applicants argued in substance that (1) DeKoning does not disclose or suggest initializing a redundancy location of a volume as data is written to the volume, as presently claimed.

As to point (1) the examiner respectfully disagrees because as stated in the above rejection, DeKoning teaches the use initializing a redundancy location of the volume as data and a redundancy of the data is written to the volume (e.g. abstract).

9. In the remarks, Applicants argued in substance that (2) the initialization process of the present invention does not proceed in parallel (i.e., as DeKoning does) but rather occurs as data is written to the volume.

As to point (2) the examiner respectfully disagrees. Claim 1 states that, "... comprising the steps of: ... initializing a redundancy location of the volume as data and a redundancy of the data is written to the volume." Applicant is reminded that "comprising" is inclusive or open-ended and does not exclude additional, unrecited elements or method steps (MPEP 2111.03) and because the initializing is occurring at the same time the data and redundancy of the data are written, the teaching of Dekoning's initialization in parallel with the writing data and redundancy data is sufficient to meet the claim limitations. Furthermore, Applicants new claim which specifically uses the word "only" to exclude the other limitations does give weight to Applicants argument and was therefore objected to as being allowable (note claim 21).

10. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of

the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

11. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Denise Tran whose telephone number is (703) 305-9823. The examiner can normally be reached on Monday, Thursday and an alternated Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Matt Kim can be reached on (703) 305-3821. The fax phone numbers for the organization where this application or proceeding is assigned are (703) 872-9306 for central Official communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 305-3900.



D.T.
May 16, 2004